



Pollution Control Hearings Board
Shorelines Hearings Board
Forest Practices Appeals Board
Hydraulics Appeals Board

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STATE OF WASHINGTON
ENVIRONMENTAL HEARINGS OFFICE

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October 13, 1993

Cynthia McCain, Co-President
Friends of Squak Mountain
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Issaquah, WA 98027

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Department of Natural Resources
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Olympia, WA 98504-0100

Wayne Tanaka, Attorney
City of Issaquah
OGDEN MURPHY WALLACE
2100 Westlake Center Tower
1601 Fifth Avenue
Seattle, WA 98101-1686

RE: FPAB No. 93-79
FRIENDS OF SQUAK MOUNTAIN v. DNR & CITY OF ISSAQUAH

Dear Parties:

Enclosed is an Order Denying Stay in this matter.

Sincerely,

Hon. William A. Harrison
Administrative Appeals Judge

WAH/jg/fsm

I hereby certify a copy of this document
to the persons and addresses listed thereon,
posted in the receptacle for United
States mail at Lacey, Wa. on 10/13/93.

FRIENDS OF SQUAK MOUNTAIN,)

Appellant,

V.

**STATE OF WASHINGTON,
DEPARTMENT OF NATURAL
RESOURCES and CITY OF
ISSAQUAH,**

Respondents.

Having considered the said motion together with the affidavit of Paul Kennard and the records and files herein, the following is hereby entered

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2 **FINDINGS OF FACT**

3 **I**

4 On September 8, 1993, the Department of Natural Resources (DNR) granted to the City
5 of Issaquah a forest practices approval for clearcutting 2 3 acres in connection with expansion of
6 a cemetery

7 **II**

8 The cutting can begin at any time Appellant appealed on October 4, 1993 It is uncertain
9 that the opposing parties can be heard in opposition before cutting commences and ends,
10 rendering the matter moot

11 **II**

12 The cutting is portrayed as follows in the affidavit of Paul Kennard, geologist, filed by
13 appellant

14 "My calculations show that areas of the slump could experience
15 increases in ground water on the order of 15% This is a significant
16 increase, and could potentially destabilize a marginally stable
feature "

17 The affidavit then suggests further study

18 **IV**

19 Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

20 From these Findings of Fact, the Board issues these:

21 **CONCLUSION OF LAW**

22 **I**

23 One seeking such a stay must meet the criteria set forth for injunctive relief in Tyler Pipe
24 Industries v Dept. of Revenue, 96 Wn 2d 785, 638 P 2d 1213 (1982) These are

25 1) A clear legal or equitable right to relief,
26

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2 2) a well grounded fear of immediate invasion of a legal or equitable right (including a
3 probability of success on the merits) and,

4 3) the acts complained of are or will result in actual and substantial injury to the moving
5 party

6 II

7 An increase in ground water of only 15% raising only the potential to destabilize is not a
8 sufficiently definite showing to justify the stay of a forest practices approval.

9 III


10 Appellant has not shown a probability of success on the merits The test of Tyler Pipe has
11 not been met The stay should be denied

12 ORDER

13 Appellant's motion for stay is denied

14 DONE at Lacey, WA, this 13th day of October, 1993.

15 FOREST PRACTICES APPEALS BOARD

16
17 
18 HONORABLE WILLIAM A HARRISON
19 Administrative Appeals Judge
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21 F93-790
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